

AN ORDINANCE

2006-03-16-0364

**AUTHORIZING A 10-YEAR LICENSE TO THE UT HEALTH SCIENCE
CENTER FOR CONTINUED MAINTENANCE OF CONDUIT UNDER LOUIS
PASTEUR DR. IN DISTRICT 8, FOR A CONSIDERATION OF \$5,000.00**

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

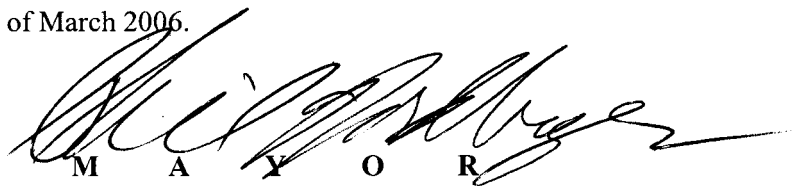
SECTION 1. The City Council authorizes and directs granting a license to encroach on public right of way in District 8, for a 10-year term and a \$5,000 fee. In furtherance of the preceding, the City Council authorizes and directs the City Manager or her designee to execute and deliver on behalf of the City a License Agreement substantially in the form attached as **Attachment I**, which is incorporated into this ordinance by reference for all purposes as if it were fully set forth. The City Manager and her designee should take all other actions reasonably necessary or convenient to effectuate the transaction described in Attachment I, including agreeing to nonmaterial changes to its terms.

SECTION 2. Funds in the amount of \$5,000 are to be deposited into Fund 11001000, General Fund Internal Order 224000000002, LICENSE AGREEMENTS IN ROW, General Ledger 4202410, LICENSE AGREEMENTS IN ROW when received from UT Health Science Center.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the Interim City Manager, or the Interim City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance becomes effective March 26, 2006.

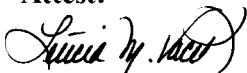
PASSED AND APPROVED this 16th day of March 2006.



M A Y O R

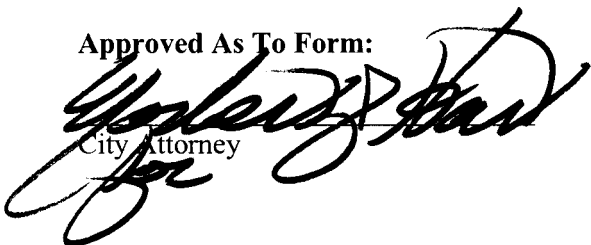
PHIL HARDBERGER

Attest:



City Clerk

Approved As To Form:



City Attorney

Agenda Voting Results

Name: 10.

Date: 03/16/06

Time: 09:45:06 AM

Vote Type: Multiple selection

Description: An Ordinance authorizing a 10-year license to the UT Health Science Center for continued maintenance of conduit under Louis Pasteur Dr. in District 8, for a consideration of \$5,000.00. [Presented by Shawn Eddy, Interim Director, Asset Management; Erik J. Walsh, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

Attachment I

License Agreement (UTHSC)

This License Agreement ("License") is entered into by and between the City of San Antonio, a Texas municipal corporation, as "Licensor," acting by and through its City Manager, or the designee, pursuant to the Authorizing Ordinance and the Licensee named below.

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1. Pertinent Information.

Authorizing Ordinance (No. and Date):

Project No. 310

Licensee: Board of Regents of the University of Texas System,
for the use and benefit of the University of Texas
Health Science Center at San Antonio

Licensee's Address: 7703 Floyd Curl Drive, San Antonio, Texas 78284

(Attention: Director of Facility Management)

Term: June 1, 2005 to May 31, 2015

Fee: \$5,000

Premises: An eight-foot wide strip in Louis Pasteur Drive and Floyd Curl Drive, as more particularly described on **Exhibit A**, which is incorporated herein by reference for all purposes as if it were fully set forth.

Scope of License: Underground conduit and cables for telecommunications.

Effective Date: June 1, 2005

Licensor's Address: City Clerk, City of San Antonio, P.O. Box 839966/2nd Floor, City Hall, San Antonio, Texas 78283-3966

2. Grant of License.

Licensor grants Licensee a license ("License") to use, maintain, and operate the Premises within the Scope of the License. This License is limited to the stated Term and is condition on Licensee's payment of the Fee.

3. Restrictions on Use/Recording

3.01 This License does not grant Licensee authority to use any area beyond the Premises.

3.02 Licensor's Superior Interest. This License grants only a privilege to use the Premises and is revocable by Licensor as provided herein. This instrument does not convey any real property interest. Licensor reserves the right to enter upon the Premises at any time for asserting its real property interest or for other purposes that do not unreasonably interfere with Licensee's Scope of License.

3.03 Recording. A Memorandum of License Agreement, incorporated herein as **Exhibit "B"**, will be recorded by Licensor in the Official Public Records of Real Property of Bexar County, Texas. Licensee is responsible for recording fees.

4. License Fee

Licensee must pay the Fee to Licensor in a one-time, lump-sum, or before 30 days after the Effective Date of this License. The License Fee must be paid at the office of the Department of Asset Management, 114 W. Commerce St., 2nd Floor (c/o Property Disposition Manager), San Antonio, Texas 78205.

5. Construction, Maintenance, and Operations

5.01 Costs. Licensee is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like of any property placed in the Premises, (hereafter "Licensee's Responsibilities").

5.02 No Liability. Licensor assumes no liability or no expense under this License. Licensor is not liable to Licensee or otherwise for damage to the Premises arising from or related to activities of Licensor in the vicinity.

5.03 Relocation. If Licensor's needs require relocation, maintenance, or adjustment in the Premises or improvements by Licensee thereto, the relocation, maintenance, or adjustments will be at Licensee's sole cost and expense.

5.04 Maintenance. Licensee, at its sole cost and expense, must maintain all improvements constructed or installed by Licensee. In so doing, Licensee must adhere to all applicable safety standards and must adhere to all applicable federal, state, or local laws, rules, or regulations. If it becomes necessary to dig in the street or otherwise disrupt traffic, Licensee must coordinate with Licensor and follow all reasonable rules and requirements imposed by Licensor in connection with such disruption. If Licensee digs, it must restore the street to Licensor's specifications.

5.05 No Power to Bind. Licensee cannot not bind or permit other to bind Licensor for payment of money or for any other obligation.

5.06 Contractors and Subcontractors. Licensee must promptly pay anyone performing work on behalf of Licensee who could file a mechanics' or materialmen's lien on the Premises. If any such lien is filed, Licensor may treat it as an event of default and terminate this License by delivering 30 days prior written notice to Licensee. But if the lien is removed or released of record within the notice period, this License remains in effect. Licensee remains obligated to clear the lien without cost to Licensor even after termination.

6. Specific Conditions

Intentionally omitted.

7. Indemnity

Intentionally omitted.

8. Sovereign Immunity

Licensor and the Licensee acknowledge they are, respectively, a political subdivision and an agency of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §101.001 *et seq.*

9. Termination

9.01 Licensor may terminate this License at any time before expiration by giving Licensee 90 days written notice, but only if authorized by the City Council.

9.02 Upon expiration or termination, all rights and privileges immediately cease, and Licensee must immediately cease use of the Premises. Licensor, at its option, may direct Licensee to either (a) abandon the encroaching improvements and appurtenances, including lines and equipment; or (b) remove all or any part of the improvements and appurtenances and restore the Premises, at Licensee's sole cost, to original condition. Improvements or appurtenances not removed within 90 days after termination of the License, whether by expiration or otherwise, become the property of Licensor. Licensor, may without liability to Licensee, dispose of such property at a public or private sale, without notice to Licensee. Licensee is liable for Licensor's reasonable costs incurred in connection with Licensee's property.

10. Assignment/Sublicensing

This License cannot be assigned or sublicensed by Licensee, other than to Licensee's parent or subsidiaries. Licensee must give Licensor 30 days prior written notice before assigning or sublicensing to a parent or subsidiary. Licensee cannot lease or sublease the Premises.

11. Condemnation

If the Premises are taken, in whole or in part, by eminent domain, then this License, at the option of Licensor, ceases on the date title to the land so taken or transferred vests in the condemning authority. Licensee waives all rights to any condemnation proceeds. Licensee may seek a separate condemnation award.

12. Attorney's Fees and Court Costs.

Intentionally omitted.

13. Taxes and Licenses

Licensee must pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes, license fees, permit fees, debts, and obligations, now or hereafter levied on the Premises as a result of Licensee's use thereof or on Licensee or its property.

14. Prohibited Interests in Contracts

14.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (a) a City officer or employee;
- (b) his parent, child or spouse;
- (c) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (d) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.02 Licensee warrants and certifies as follows:

- (a) Licensee and its officers, employees and agents are neither officers nor employees of the City.
- (b) Licensee has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.03. Licensee acknowledges that City's reliance on the above warranties and certifications is reasonable.

15. Licensee Financing.

Licensee may encumber Licensee's personal property located within the Premises, and any lien of Licensor against Licensee's personal property (whether by statute or under the terms of this License) is subject and subordinate to such security interest. Licensor will execute such documents as Licensee's lenders may reasonably request in connection with any such financing, if the documents do not modify the rights and obligations of this License. The City Manager of the City of San Antonio or a designee, including the Director, Department of Asset Management, is authorized hereunder to execute such documents, without the necessity of a specific City of San Antonio ordinance. But if the documents modify the rights and obligations of the License, then the documents can be approved only by specific ordinance.

16. Lien for License Fee, Taxes, Fees and Other Charges.

Intentionally omitted.

17. Consent/Approval of Licensors.

Licensors' consent and approval may be granted by the Director, Department of Asset Management, City of San Antonio ("City"), as designee of the City Manager, unless the City Charter requires that the City Council consent by the passage of a City ordinance.

18. Subsequent Transfer by Licensors.

If, by any mechanism, ownership or control of the Premises is transferred from Licensors, the transferee automatically becomes the Licensors hereunder and is entitled to all the rights of the Licensors, including but not limited to termination without cause.

19. Miscellaneous Provisions

19.01. Relationship Limited. This instrument creates only the relationship of Licensors and Licensee. The parties are not principal and agent, partners, joint venturers, or participants in any other enterprise between them.

19.02. Nondiscrimination. Licensee must not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices or in the use of the Premises.

19.03. Release From Liability/Notice of Sale. If Licensors transfers ownership of the Premises, Licensors will have no liability or obligation relating to the period after transfer. Licensors's transferee will succeed to all Licensors's rights hereunder.

19.04. Yielding Up. Licensee must, at termination, whether by expiration or otherwise, yield the Premises up peacefully, including any improvements and fixtures (other than trade fixtures).

19.05. Authority To Execute. The party or parties executing this License on behalf of Licensee personally warrant that each of them has full authority to do so.

19.06. Acknowledgment Of Reading. The parties acknowledge that they have thoroughly read this License, including any exhibits or attachments, and have sought and received whatever advice and counsel was necessary to form a full and complete understanding of their rights and obligations and, having so done, execute this License freely and voluntarily.

19.07. Applicable Law. This License is entered into in San Antonio, Bexar County, Texas. **The Construction Of This License And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

19.08. Severability. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

19.09. Successors. This License inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

19.10. Integration. This Written License Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

19.11. Modification. This License may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

19.12. Third Party Beneficiaries. This License is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries.

19.13. Notices. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

19.14. Pronouns. In construing this License, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire License, not to any particular provision of it.

19.15. Captions. Paragraph captions in this License are for ease of reference only and do not affect the interpretation hereof.

19.16. Counterparts. This License may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this License, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

19.17. Further Assurances. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the

provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this License

19.18. Ambiguities Not to Be Construed against Drafter. Ambiguities, if any, must be resolved without construction against the drafter.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands:

Licensor:

Licensee:

City of San Antonio,
a Texas municipal corporation

**Board of Regents of the University of
Texas System, for the use and benefit
of the University of Texas Health
Science Center at San Antonio**

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

City Clerk

Approved As To Form:

City Attorney

Exhibit A

Being an 8.00 wide private conduit area in the street right of way of Louis Pasteur Drive and Floyd Curl Drive, San Antonio, Texas, and being more particularly described as follows:

BEGINNING at a point on the southeast R.O.W. line of Louis Pasteur Drive, said point being N 41° 43 ' 46 " E 16.49 feet from the western-most corner of Lot 16, Block 2, N.C.B. 12812, Oak Hills Park, Unit 1, as recorded in Volume 4500, Page 227 of the Deed and Plat Records of Bexar County, Texas;

THENCE N 79° 44 ' 09 " W 77.47 feet across the street R.O.W. of Louis Pasteur Drive to a point on a curve to the left, said curve being the property line return of Lot 5, Block, N.C.B. 12816;

THENCE along said curve to the left which has a radius of 30.00 feet, a central angle of 15 ° 45 ' 54 ", a chord which bears N 03° 16 ' 16 " W, an arc distance of 8.26 feet to a point on said curve;

THENCE 79 ° 44 ' 09 " E 84.29 feet across the street R.O.W. of Louis Pasteur Drive to a point on the southeast R.O.W. line of said Louis Pasteur Drive;

THENCE S 41 ° 43 ° 46 " W 9.38 feet along the southeast R.O.W. line of Louis Pasteur Drive to the Point of Beginning.

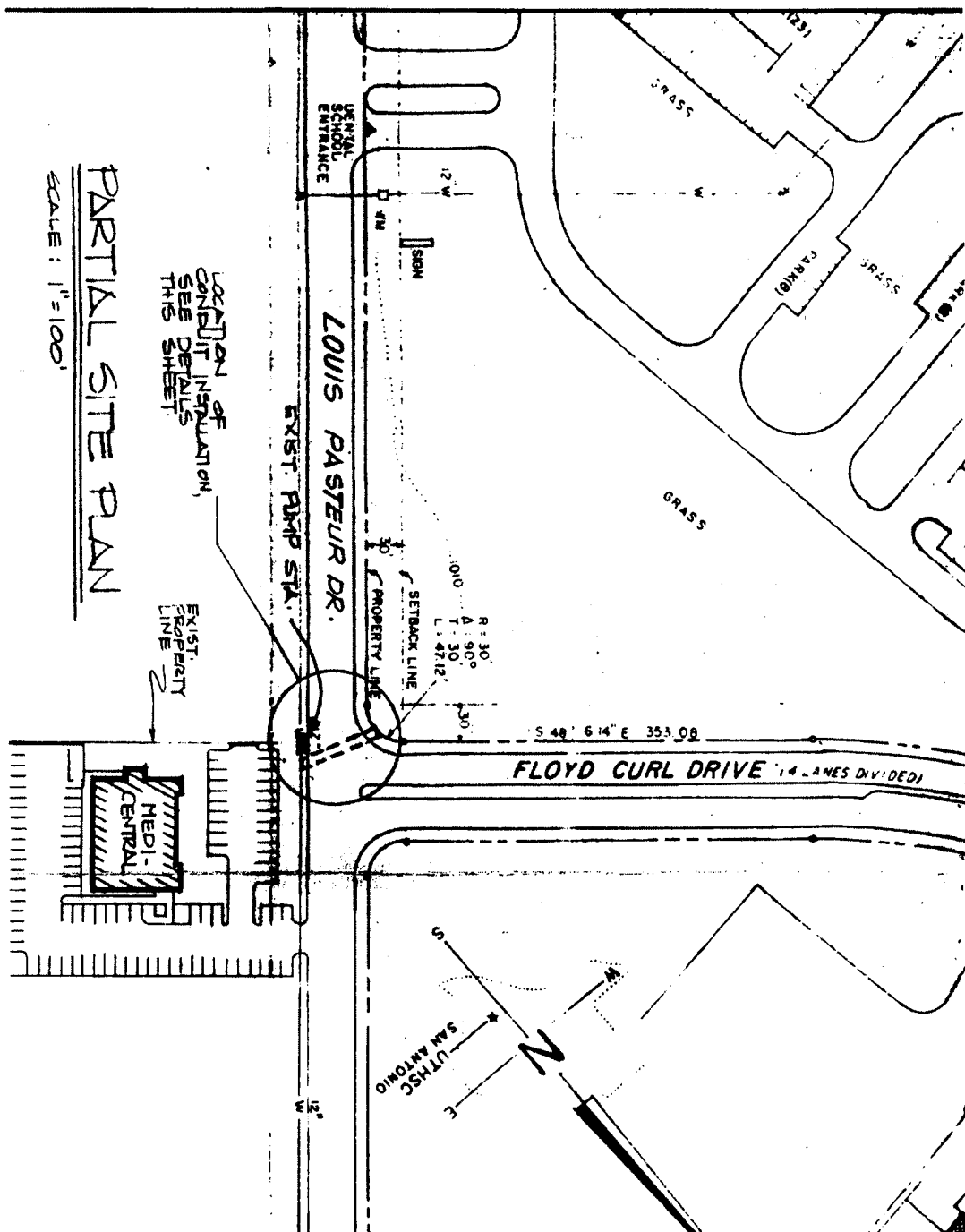


Exhibit B

Memorandum of License Agreement

This is a Memorandum of License Agreement ("Agreement") entered into by and between Licensee and the City of San Antonio, a Texas municipal corporation (Licensor), acting by and through its City Manager, or designee, pursuant to the Authorizing Ordinance.

**Authorizing Ordinance
(No. and Date):**

Project No. 310

Licensee: Board of Regents of the University of Texas System,
for the use and benefit of the University of Texas
Health Science Center at San Antonio

Licensee's Address: 7703 Floyd Curl Drive, San Antonio, Texas 78284
(Attention: Director of Facility Management)

Term: June 1, 2005 to May 31, 2015

Premises: An eight-foot wide strip in Louis Pasteur Drive and
Floyd Curl Drive, as more particularly described on
Exhibit A, which is incorporated herein by reference
for all purposes as if it were fully set forth.

Scope of License: Underground conduit and cables for
telecommunications.

Effective Date: June 1, 2005.

Licensor's Address: City Clerk, City of San Antonio, P.O. Box 839966/2nd
Floor, City Hall, San Antonio, Texas 78283-3966

Licensor has granted a license to Licensee as described above. For more detailed terms, refer to the License Agreement.

The License is personal to Licensee and cannot be assigned or sublicensed except as provided in the License.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands:

Licensors:

City of San Antonio,
a Texas municipal corporation

(Signature)

(Printed Name)

(Representative Capacity)

(Date)

Licensee:

**Board of Regents of the University of
Texas System, for the use and benefit of
the University of Texas Health Science
Center at San Antonio**

(Signature)

(Printed Name)

(Representative Capacity)

(Date)

Attest:

City Clerk

Approved As To Form:

City Attorney

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me by _____,
_____ of the City of San Antonio, a Texas municipal corporation, on
behalf of that entity.

Dated: _____

Notary Public, in and for State of Texas

My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me by Florence Mayne, Executive Director of the Real Estate Office of the Board of Regents of the University of Texas System, for the use and benefit of the University of Texas Health Science Center at San Antonio, on behalf of that entity in the capacity stated.

Dated: _____

Notary Public, in and for State of Texas

My Commission Expires: _____

After Recording Return to:

City of San Antonio
Department of Asset Management
P.O. Box 839966/2nd Floor, Municipal Plaza
San Antonio, Texas 78283-3966
Attn: Property Disposition Manager